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**IN THE
COURT OF APPEALS OF INDIANA**

JOSEPH MANGIARACINA,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0612-CR-1157

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Nancy Broyles, Judge
Cause No. 49G05-9507-CF-91490

October 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Joseph Mangiaracina appeals the revocation of his probation and the execution of his previously suspended sentence. Mangiaracina presents the following restated issues for review:

1. Did the State present sufficient evidence to prove that Mangiaracina violated his probation?
2. Did the trial court err in refusing to allow Mangiaracina to reopen his case?
3. Did the trial court abuse its discretion in imposing the previously suspended sentence?

We affirm.

The facts favorable to revocation are that in 1996, Mangiaracina was convicted of child molesting as a class B felony. He was sentenced to fifteen years, with three years suspended to probation. The first year of probation was to be served under home detention. When Mangiaracina completed the executed portion of his sentence, it was determined that he could not participate in home detention because his house did not have a working telephone. After a review, it was determined that Mangiaracina would instead spend the first year of probation on work release at the Riverside Residential Center (Riverside). Mangiaracina was admitted to Riverside on June 7, 2006. Residents at Riverside were required to obtain confirmation from the places they were permitted to visit and present such confirmation upon their return to Riverside in order to verify their whereabouts. The confirmation was to include not only the place visited, but the times of arrival and departure as well.

On October 11, 2006, Mangiaracina was scheduled to visit a law library from late morning until 4 p.m. On that same day, he was scheduled to attend counseling and had a pass to leave Riverside for that purpose from 3:30 p.m. until 9:00 p.m. The two passes were combined into one. Mangiaracina left at 11:30 a.m. and was required to return between 9:30 and 11:30 p.m. Although he returned by 8:30 p.m. with confirmation that he had attended the counseling session, he did not provide verification that he was at the law library at the designated time. Therefore, there were four hours of unaccounted time on October 11. On October 12, Mangiaracina was scheduled to visit the Social Security Administration office and the Veteran's Administration office. He left Riverside for the scheduled appointments at 6:50 a.m. and returned before he was scheduled to return. He did not, however, have confirmation that he had visited either the Social Security Office or the Veteran's Administration office. Thus, there was approximately three hours and forty-two minutes of unaccounted time on October 12.

Aaron Cushingberry was also a resident at Riverside. On October 20, 2006, Cushingberry was caught smoking cigarettes in his room. Cigarettes and smoking were prohibited at Riverside. Cushingberry informed Reuben Cooper, Riverside's Correctional Administrator, that he had obtained the cigarettes from Mangiaracina. Riverside personnel searched Mangiaracina's room and discovered cigarettes in a soap dish in Mangiaracina's locker.

On October 25, a Notice of Violation of Community Corrections Rules was filed against Mangiaracina, alleging three violations, two involving the failure to present

confirmation of his whereabouts on October 11 and 12, 2006, and the other for possessing contraband, i.e., the cigarettes discovered in Mangiaracina's locker on October 20, 2006. On November 16, 2006, a hearing was held on the notice of violations, after which the trial court found the allegations to be true. As a result, on November 30, 2006, the trial court executed the previously suspended portion of Mangiaracina's sentence, which was 3 years minus 141 days for time served in community corrections.

1.

Mangiaracina contends the evidence was insufficient to prove he violated the conditions of his probation.

“[P]robation is a favor granted by the State, not a right to which a criminal defendant is entitled.” *Podlusk v. State*, 839 N.E.2d 198, 199 (Ind. Ct. App. 2005) (quoting *Sanders v. State*, 825 N.E.2d 952, 954 (Ind. Ct. App. 2005), *trans. denied*). A probation revocation hearing is civil in nature and the State need prove alleged violations only by a preponderance of the evidence. *Podlusk v. State*, 839 N.E.2d 198. We review a decision to revoke probation for an abuse of discretion. *Id.* In so doing, we consider only the evidence most favorable to the judgment and do not reweigh the evidence or judge the credibility of the witnesses. *Id.*

The evidence presented at the revocation hearing established that Mangiaracina was to be placed in community corrections for his first year of probation “with placement and programs they deem appropriate.” *Appellant's Appendix* at 56. Mangiaracina

consented to comply with those conditions. Mangiaracina was assigned to Riverside and was advised and understood that facility's rules requiring verification of whereabouts when absent from the facility. The State presented evidence that Mangiaracina failed to provide such verification with respect to a total of more than seven hours October 11 and 12, 2006. Specifically, Danielle Pierce, Mangiaracina's counselor at Riverside, testified that he did not provide verification that he was at the law library for four hours on October 11 and at the Veteran's Administration offices for approximately three hours and forty minutes on October 12. Mangiaracina disputed Pierce's testimony at the hearing, testifying on his own behalf that he had in fact presented verification to Riverside personnel, but that Riverside "has had a lot of problems with them losing the verification." *Transcript* at 39. It was the trial court's task to decide whether Mangiaracina's testimony was worthy of credit. It apparently did not believe Mangiaracina's assertions in that regard, and we will not substitute our judgment for that of the trial court.

We note also Mangiaracina's argument on this issue that the duty to provide verification was not a condition of his probation to begin with, as it was not included in the original probation order. Although that is technically true, Mangiaracina did not argue at the revocation hearing that he was not aware of the conditions of placement at Riverside. Rather, he argued that he did not violate those rules. In fact, in vigorously defending his actions as compliant with Riverside rules, he implicitly acknowledged his awareness that the rules required verification of whereabouts when absent from the

facility. Further, the court specifically advised Mangiaracina at the time home detention was changed to community corrections that he was required to abide by Riverside's rules and regulations. Under these circumstances, Mangiaracina may not gain reversal on grounds that the trial court did not advise him of the conditions for staying at Riverside. *See Patterson v. State*, 750 N.E.2d 879, 885 (Ind. Ct. App. 2001) ("[i]t is clear that when a person is found to have violated the terms of their placement, the trial court may revoke placement 'and commit the person to the Department of Correction for the remainder of the person's sentence'" (quoting Ind. Code Ann. § 35-38-2.6-5(3) (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007))).

As a condition of his probation, Mangiaracina was required to obey the rules and regulations of Riverside. The trial court's finding that he violated one of those conditions by failing to provide verification is supported by sufficient evidence.

2.

Mangiaracina contends the trial court erred in refusing to allow him to reopen his case, which Mangiaracina sought to do in order to present additional evidence pertaining to the allegation that he violated Riverside's rule against having cigarettes in the facility.

Proof of a single violation of the conditions of probation is sufficient to support a decision to revoke probation. *Bussberg v. State*, 825 N.E.2d 37 (Ind. Ct. App. 2005), *trans. denied*. Even assuming for the sake of argument that the trial court erred as Mangiaracina suggests, in view of our affirmance of the trial court's finding with respect to violating Riverside's verification rule, the error is harmless.

3.

Mangiaracina contends the trial court erred in executing the previously suspended three-year sentence after revoking his probation.

After revoking probation, a trial court may execute all or part of the previously suspended sentence, subject to certain restrictions not applicable here. *Stephens v. State*, 818 N.E.2d 936 (Ind. 2004). We review the length of the executed sentence imposed to determine whether it was reasonable in view of the nature of the violations and the character of the offender. *Id.* We conduct this review under an abuse of discretion standard. *Sanders v. State*, 825 N.E.2d 952.

The trial court determined that Mangiaracina had failed to follow Riverside's rules concerning reporting his whereabouts when he was absent from the facility. As a convicted sex offender, in the future Mangiaracina will be required to observe certain restrictions with respect to where he goes and those with whom he may have contact. In view of those facts, his failure to follow Riverside's rules and restrictions concerning his whereabouts takes on a heightened significance. Accordingly, the trial court did not abuse its discretion in ordering Mangiaracina to serve the entirety of his previously suspended sentence.

Judgment affirmed.

SHARPNACK, J., and RILEY, J., concur.